SUPREME COURT, U. S.

Supreme Court, U.
FILED
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MICHAEL RODAK, JR.

IN THE SUPREME COURT OF THE UNITED STATES

No. 74-435 1

ROBERT G. WARD

vs.

PHILADELPHIA ELECTRIC COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

ROBERT G. WARD
In Propria Persona

85 Oak Road
Trappe, PA 19426

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petitioner, ROBERT G. WARD, in Propria Persona, requests that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Pennsylvania entered in the above titled cause on July 19, 1974.

CITATIONS OF OPINIONS BELOW

The Honorable G. Fred DiBona, Judge of the Court of Common Pleas of Philadelphia County, Pennsylvania, entered an order and opinion on January 17, 1973, under No. 400, June Term, 1962. Copies of the order and opinion are attached hereto, made a part hereof and marked Exhibit "A."

The appeal was taken to the Superior Court of Pennsylvania under No. 694, October Term, 1973, and argued before that court and said appeal was denied, Superior Court entering its decision per curiam, on February 7, 1974, firmly the order of the Lower Court, copy of said order is attached hereto, made a part hereof and marked Exhibit "B." Thereafter, an appeal was perfected with the Supreme Court of Pennsylvania, Eastern District, under No. 1344, Allocatur Docket. Thereafter, a Petition for Allowance of Appeal was filed with the Supreme Court of Pennsylvania, Eastern District, under No. 1344, Allocatur Docket. Thereafter, the Supreme Court of Pennsylvania entered an Order on August 14, 1974, denying said Petition, per curiam, a copy of said Order is attached hereto, made a part hereof and marked Exhibit "C." A Petition for Reconsideration denied by the Supreme Court of the Petition for Allowance of an Appeal was filed with the Supreme Court of Pennsylvania, Eastern District, under the same Allocatur Docket number and, thereafter, Supreme Court of Pennsylvania, by Order dated July 19, 1974, denied said Petition for Reconsideration of Petition for Allowance of Appeal, per curiam, a copy of said Order is attached hereto, made a part hereof and marked Exhibit "D."

The Opinion of the Supreme Court of Pennsylvania is presently unreported.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania, confirming the judgment of the Superior Court of Pennsylvania, the above mentioned judgments of the Superior Court of Pennsylvania, and the Court of Common Pleas of Philadelphia County, Pennsylvania, was issued on July 19, 1974, copy of said opinion is attached hereto, made a part hereof and marked Exhibit "E."

The Jurisdiction of this Court is under 28 U.S. C.A. 2873.

QUESTIONS PRESENTED FOR REVIEW

The following will be the questions presented for review:

I. Whether it is a violation of the due process clause for a Lower Court judge to determine that Petitioner had authorized settlement of a civil suit, therefore, force said settlement upon the petitioner where such conclusion was not supported by the evidence presented, and even if supported by the evidence, whether such settlement may still be forced upon the petitioner when he has not signed any documents in support of an alleged out of court settlement and where he promptly repudiates said settlement.

II. Whether it is a violation of the Seventh Amendment, namely, the right to a trial, to force upon petitioner an out of court settlement where the petitioner insists upon a trial of the issue by either trial with or without a jury.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the Federal Constitution declares that no person shall "be deprived of life, liberty, or property without due process of law." The Fourteenth Amendment declares that no state shall "deprive any person of life, liberty, or property without due process of law." The Fourteenth Amendment of the Federal Constitution provides that these states are forbidden to deny any person within their jurisdiction equal protection of the law. The Seventh Amendment of the Federal Constitution provides that a trial by jury shall be preserved from suits of common law.

STATEMENT OF FACTS

During October 1961, plaintiff, while operating his automobile on Route 202, North, King of Prussia, was struck in the rear by defendant. No fault could be attributed to plaintiff, who sustained serious injury to his spine, and a case with no apparent liability issue was presented.

Plaintiff secured counsel to represent him, and executed the usual contingent fee agreement for ⅓ in the event of a successful conclusion to the case. His first contact with an attorney was a friend, who filed the claim, but referred the case to B. Nathaniel Richter, Esquire, who assigned the case to Jack Bernstein, Esquire of Mr. Richter's firm. After much delay the case proceeded to the trial list in late 1969, although the sole issue would appear to be the measure of damages.

A settlement conference with Judge Gold and respective counsel was arranged, where a figure of $5,000.00 was refused (54a) and the case proceeded closer to trial. In an effort to settle the case, Attorney Richter obtained a higher offer from the defense in the amount of $7,500.00. Richter testified that he wished to settle the case. He also testified that he believed that the case was worth $50,000.00 (40a-42a). Nevertheless, he recommended the $7,500.00 to the plaintiff, whose response was that he would think about it. Richter then contacted defense counsel and advised his client "probably" would take the settlement (41a). Later he learned plaintiff was dissatisfied and did not want to settle for that amount.

Attorney Bernstein, who was quite active and involved in the settlement negotiations, testified that after plaintiff had

been advised of the $7,500.00 offer, releases were forwarded to Mr. Ward, who had also "requested a recap, a breakdown on how the case was to be distributed, and that was being prepared by the bookkeeping department to be forwarded to him." (55a-57a) Bernstein noted that "Ward was not going to take the $7,500.00 at this point, but as far as we were concerned, we were not going to try this case, that whatever agreement he had with Mr. Richter would be binding on us." (56a) Bernstein admitted that he knew Ward wanted between $50,000.00 and $250,000.00 for his case (60a), and that he would not accept $7,500.00 (66a).

There was clear, uncontradicted evidence that plaintiff never signed any releases; that he told counsel promptly of his decision not to accept the settlement after he received the releases and "recap"; that no praecipes to mark the case settled were ever filed; that the docket entries show the case had not been settled, that no money had been deposited with the Court on account of settlement; that plaintiff's counsel repeatedly tried to get the release signed and returned so that they could settle the case; that plaintiff never actually consented to the settlement suggested, but in fact had repudiated it.

On this evidence, Judge DiBona, hearing a motion to compel the entry of a settlement, decided that plaintiff had authorized counsel to settle the case, and directed settlement be made pursuant to his order.

Petitioner's attorney raised his right to trial in violation of due process on page 116a of the Superior Court of Pennsylvania record as follows: "If the court pleads, I honestly urge that Mr. Ward be given his day in court for the trial of

this case." A copy of said statement is attached hereto, made a part hereof and marked Exhibit "E."

The petitioner continued to raise and protect the jury trial and due process issues in the Superior Court of Pennsylvania brief by stating "thus, the procedure utilized in bringing the issue before the court appears to be entirely improper, removes from the province of the jury a question of fact which is presented by the prior fact to decide. By taking the issue out of the context of trial, the court has usurped the jury's function, denied plaintiff his right to have his case heard by a jury. The legislature obviously believes this to be the case and has so indicated. Thus, the entire issue of prior release should be remanded for trial by jury along with the issues of liability and measure of damages." Petitioner continued to show his rights to a trial by jury in his petition for Allowance of Appeal to the Supreme Court of Pennsylvania in paragraph eight, Subparagraph B of Exhibit "C" of this petition where the defendant stated (b) "should the issues of prior releases be presented as an affirmative defense to be decided by jury in the trial of this case." Petitioner again reinstated his constitutional issue in paragraph nine of his petition to the Supreme Court of Pennsylvania for reconsideration of the petition for Allowance of Appeal which is marked Exhibit "D" and set forth "nine." Petitioner urges the Honorable Court to recognize the long, hard climb that has been made over the years, in which one by one now a technical reasons for dismissing cases have been rejected, the right of parties to have their day in court and their cases decided on the merits has been re-enforced, expanded and enhanced. It is that right that petitioner seeks to enforce.

REASONS FOR THE ALLOWANCE OF A WRIT

This Court should review the present issues on Writ of Certiorari and that the courts of Pennsylvania have so far departed from the accepted and usual course of judicial proceedings, and have sanctioned such a departure by lower court as to call for the exercise of this course power of supervision. In the present case, petitioner has been denied his right under the Seventh Amendment of the Federal United States Constitution on the basis of an alleged out of court settlement of his claim for personal injuries arising out of an automobile accident in which he suffered substantial injuries and permanent disability. The petitioner has been denied his right to a trial and has been forced to accept a compromise of his claim without the actual litigation and trial of the factual issues that were a part of his claim. The hearing judge has issued an order refusing the petitioner his request for a trial of the above issues, and foreclosed petitioner of the above mentioned because of doubtful actions of his counsel. The petitioner has been denied his day in court, a right which this court has upheld in many occasions prior hereto; *Duncan vs. Louisiana,* 391 U.S. 195; *Bloom vs. Illinois,* 391 U.S. 194; the above mentioned actions are in violations of the "due process of law" and apply to the property rights of individuals when those properties are bridged and frustrated, when an individual's factual issues are not determined by a jury; *State vs. Rose,* 33 DEL 168, 132A 864.

In a case such as the present where there is a factual dispute between the petitioner and his former counsel, such factual dispute should be resolved by a jury or such controverted issues of fact should be resolved by a jury; *Ex parte,*

101 U.S. Fed 2nd 870, affirmed 308 U.S. 519; *Baltimore and C. Line, Inc. vs. Redman,* 295 U.S. 654. The above mentioned proceedings is a clear denial of fundamental fairness shocking to the universal sense of justice and thus violates the due process of law. The opportunity to have the controversial factual issues decided by a trial is an essential element of due process and no one should be legally divested of his property rights unless allowed a trial before an impartial party, where he will be allowed to meet the issues and present his law and fact to the fact finder. He must be given his day in court; *Shields vs. Utah Idaho C. R. Company,* 305 U.S. 177; *Powell vs. Alabama,* 287 U.S. 45; *Black vs. United States,* 284 U.S. 421; *Baker vs. Baker,* 242 U.S. 394 (Riverside N.D.); *River Cotton Mills vs. Menefee,* 237 U.S. 189; *Turpin vs. Lemon,* 187 U.S. 51; *Ray vs. Norstworthy,* 23 Wall 128.

Finally, there has been a violation of due process cause of the United States Constitution in that the petitioner was denied his right to a jury trial and to litigate issues of fact while other persons similarly situate have been given the opportunity of such an opportunity. The Fourteenth Amendment of the Federal Constitution provides that states are forbidden to deny any person within their jurisdiction equal protection of the laws. Specifically, no state shall deprive any person of his propery without due process of law or deny any person within its jurisdiction the equal protection of the laws and that equal protection and security should be given to all under like circumstances in the enjoyment of their property rights and persons should be equally entitled to pursue the same legal remedy. The present case of the petitioner, the petitioner has been denied such equal rem-

edies with other persons similarly situate; *Kentucky Finance Corporation vs. Paramount Auto Exchange Corporation,* 262 U.S. 544; *Truax vs. Corrigan,* 257 U.S. 312; *Gardiner vs. Michigan,* 199 U.S. 325; *Comie vs. Union Sewer Pipe Company,* 184 U.S. 540; *Tigner vs. Texas,* 310 U.S. 141; *Eldridge vs. Trezevant,* 160 U.S. 452; *Hollinger vs. Davis,* 146 U.S. 314; *Santa Clara County vs. Southern P. R. Company,* 118 U.S. 394.

The hearing below discloses that the petitioner's counsel was aware that the petitioner wanted between $50,000 and $250,000.00 as a settlement of his claim and that he would not accept $7,500.00. There is no evidence to show either authority to settle or later acceptance of settlement by petitioner's former attorney; in fact, specific evidence that no authority was given, and that petitioner repudiated the settlement sought to be imposed upon him by his own counsel. An attorney has no power to release a client's cause of action or to surrender his substantial rights in whole or in part or compromise or settle his client's litigation without special authority to do so. In this case, the litigant did not give such authorty and, therefore, the petitioner's attorney's agreement to accept less than the amount that the petitioner was willing to accept would not affectuate a settlement prior to trial.

WHEREFORE, Robert G. Ward, respectfully requests for all of the foregoing reasons, this Honorable Court grant the Petition for Writ of Certiorari to the Supreme Court of Pennsylvania.

Respectfully Submitted,

ROBERT G. WARD
In Propria Persona

PETITION OF ROBERT G. WARD FOR RECONSIDERATION OF THE DENIAL BY THE SUPREME COURT OF PENNSYLVANIA OF ROBERT G. WARD'S PETITION FOR ALLOWANCE OF AN APPEAL

To The Honorable, The Chief Justice And The Associate Justices Of The Said Court:

NOW COMES ROBERT G. WARD, by his attorney, Thomas H. Goldsmith, Esquire, and respectfully petitions the Honorable Court to reconsider its Order of 14 May 1974 (received by Petitioner pursuant to letter dated 29 May 1974) denying Petitioner's Petition for Allowance of Appeal in the above matter, and assigns therefor the following reasons:

1. This is a matter dealing with the question of whether or not Petitioner who refused to sign a release in connection with a personal injury claim, can nevertheless be held to have agreed to a compromise settlement of such claim, resulting in an Order of the Court of Common Pleas, having the settlement proceeds paid into Court and the matter having been marked "Settled, Discontinued and Ended."

2. Petitioner was represented by counsel during proceedings in the trial Court but handled the Appellate process of this case *in propria persona*.

3. Petitioner, in the judgment of present counsel, did not adequately inform the Honorable Court of the basis for the request for allocatur, and accordingly, his Petition was denied.

4. Pursuant to Article II, Section 204 (a) of the Appellate Court Jurisdiction Act of 1970, Act of 1970, 31 July, P.L. 673 No. 223 (17 P.S. §211.204 (a)), this Court has the power to review otherwise unreviewable orders of the Superior Court. Prior statutes granting essentially the same authority (Act of 1895, 24 June, P.L. 212, Section 7 (e); 17 P.S. §190) provoked some decisional law from which the criteria for granting a Petition for Allocatur can be derived. *Kraemer v. Guarantee Trust & Safe Deposit Co.*, 173 Pa. 416, 33 A. 1047 (1896).

These criteria are said to be

(a) bearing of the question on public interests or rights;

(b) importance of the decision as a precedent in frequently occurring litigation;

(c) diversity of opinions in other Courts and consequent desirability of final determination;

(d) similar considerations.

5. Petitioner urges the Honorable Court to consider that the instant case deals with the extremely sensitive areas of the relationship of an attorney to his client, of the authority granted by the client to the attorney, of the situation that arises where the attorney and his client are not in agreement as to how best to handle the client's work, and of paramount importance, the case is concerned with the failure of the Courts and counsel to give Petitioner his day in Court allowing a jury to decide his case on its merits.

6. Petitioner urges the Honorable Court to consider that these are not issues of concern only to those involved. On the contrary, the issues here presented go to the very

foundations of our judicial system, which as the Honorable Court well knows is undergoing the most cynical scrutiny by the citizenry of this country and is under heavy attack from all sides. Thus while in the narrowest sense it could be said that on a dollar basis this case is of primary concern to those directly affected, it is certainly beyond doubt that the principles here involved have an immense bearing on public interests and rights. In the questioning atmosphere of our time the public has made these issues of primary interest. We have bound ourselves to make the public aware that justice is being done, and we are committed to making sure that we avoid not only wrongdoing, but the appearance of wrongdoing. Petitioner submits that the bearing on public interest and rights is overwhelming in this case.

7. Petitioner urges the Honorable Court to consider that the most fundamental interests and rights are at issue here. Nothing can be more fundamental to our system than the right to have one's case heard. Nothing can be of greater interest or of more concern to the Courts than the propriety of attorney-client relationships and the right of the client to determine the course of his own business.

8. Petitioner urges the Honorable Court to consider the ever increasing unfavorable publicity over the activities of attorneys, particularly in the area of personal injury litigation with especial reference to the operation of the contingent fee system. Petitioner contends that litigation of the sort here presented is not unique, but will rather become more and more common in the future, as the citizenry becomes more and more worldly wise, and less and less willing to accept the bland assurances of lawyers or anyone else for anything. In short, the Petitioner requests the Hon-

orable Court to seize the opportunity to take up this thorny and difficult case and to let the persons involved enjoy not only justice but the appearance thereof as well.

9. Petitioner urges the Honorable Court to recognize the long hard climb that has been made over the years, in which one by one narrow technical reasons for dismissing cases have been rejected, and the right of parties to have their day in Court and their cases decided on the merits has been reinforced, expanded and enhanced. It is that right that Petitioner seeks to invoke.

WHEREFORE, Petitioner respectfully prays the Honorable Court to reconsider its Order denying the Petition for Appeal, and to order the matter to be heard on appeal before the Supreme Court of Pennsylvania.

THOMAS H. GOLDSMITH
Attorney for Petitioner
711 Land Title Bldg.
LO 7-4737

PETITION FOR ALLOWANCE OF APPEAL

To: The Honorable Chief Justice, And The Judges Of Supreme Court:

NOW COMES, ROBERT G. WARD, In Propria Persona and respectfully petitions this Court to grant allocatur in the above captioned matter for the following reasons:

1. Petitioner is the individual named Plaintiff in the above captioned action.

2. A Hearing was had before the Honorable G. Fred DiBona on the "PETITION OF DEFENDANT, PHILADELPHIA ELECTRIC CO., FOR LEAVE TO PAY THE AGREED SETTLEMENT AMOUNT INTO COURT."

3. The Court found that Plaintiff, Ward accepted the offer of $7,500.00 in settlement of all claims in his case and ordered that the Defendant, Philadelphia Electric Company pay into Court the said settlement funds of $7,500.00 and that the Prothonotary of the Philadelphia Court of Common Pleas upon receipt of this $7,500.00 mark the record, settled, discontinued and ended and discharge the defendant, Philadelphia Electric Co., of all liability to the Plaintiff, Robert G. Ward.

4. Petitioner appealed the Judgment and Order to the Superior Court as of Number 694 October Term, 1973.

5. Petitioner's Appeal was denied. The Superior Court entering its decision Per Curiam February 7th, 1974 affirming the Order of the Lower Court.

6. Petitioner is advised, believes and therefore avers that the record before the Trial Judge was insufficient to support the verdict, even considering the evidence in the light most favorable to the defendant.

7. Petitioner is advised, believes and therefore avers that the Superior Court misapprehended the true issue raised on the Appeal; that both the trial judge and Superior Court on review erred in its treatment of the Plaintiff's unsigned release and prompt repudiation thereof and misapplied the law set forth in the Decisions of the Supreme Court of Pennsylvania.

8. The issues involved in this case, are:

(a) When the Trial Judge improperly determined that Plaintiff had authorized settlement, where this conclusion was not supported by the evidence presented, must the Appellate Court reverse.

(b) Should the issue of prior release be presented as an affirmative defense to be decided by a Jury in the trial of this case.

(c) Where assuming Plaintiff's counsel was given authority to settle the case for $7,500.00, was the client bound by settlement negotiations when he promptly repudiated it and refused to execute a release.

9. The record of the hearing discloses that the Plaintiff's counsel was aware that Plaintiff wanted between $50,000. and $250,000. for his case and that he would not accept $7,500., and the Learned Judge found the Plaintiff had accepted the offer of $7,500.00.

10. Petitioner brings this Petition in accordance with the Act of 1970, July 31 P. L. 673 Number 223 Act Number 204 (17 P.S. 211, 204(a)).

11. The Opinion of the Superior Court is attached hereto and marked Exhibit "A."

WHEREFORE, Petitioner prays that appeal be allowed by the Supreme Court of Pennsylvania.

Respectfully submitted,

ROBERT G. WARD, *Petitioner*

No. 1124

In the Superior Court of Pennsylvania

No. 694 October Term, 1973

ROBERT G. WARD,
Appellant

vs.

PHILADELPHIA ELECTRIC CO.

Appeal from the Order of the Court of Common Pleas, Trial Division, Law, of Philadelphia County, at No. 400 June Term, 1962.

PER CURIAM FILED: February 7, 1974

Order affirmed.

EXHIBIT "A"

ANSWER OF PHILADELPHIA ELECTRIC COMPANY TO PETITION FOR RECONSIDERATION OF DENIAL OF ROBERT WARD'S PETITION

This case is a simple trespass action arising out of a motor vehicle accident. The case was settled by the attorneys for the parties for $7,500, which is fifty per-cent more than was recommended by Judge Gold at a settlement conference.

Subsequent to the settlement, petitioner, Robert Ward (plaintiff below), though having authorized the settlement, began to vacillate and refused to execute a release. Three years after the settlement Ward discharged his attorneys and retained new counsel, who attempted to move the case to trial.

Respondent, Philadelphia Electric Company (defendant below), filed a Petition for Leave to Pay the Agreed Settlement Amount Into Court. After a full hearing at which Ward, his former attorneys and the attorney for Philadelphia Electric testified, Judge DiBona found as a fact that Ward was present when the settlement was agreed to and that he had authorized his attorneys to settle the case for $7,500. Judge DiBona entered an Order on January 17, 1973 granting the Petition and the case marked "Settled, Discontinued and Ended" by the Prothonotary.

On February 20, 1973 Ward filed an Appeal to the Superior Court of Pennsylvania. Briefs were filed by both appellant and appellee. The matter was heard on oral argument on December 4, 1973. Petitioner's Appeal was denied and the Superior Court entered its Order per curiam on February 7, 1974 affirming the Order of the lower court.

On March 5, 1974, Ward filed a Petition for Allowance of Appeal with this Honorable Court. On May 14, 1974 this Court denied the Petition, *per curiam*.

On June 11, 1974 Ward filed the instant Petition for Reconsideration of the Denial of the Petition for Allowance of Appeal.

The instant Petition should be denied since it sets forth no change in circumstances which would warrant a modification of this Court's previous decision not to allow an appeal in this action.

A comparison of the original Petition for Allowance of Appeal and the instant Petition for Reconsideration clearly demonstrates that there has been no change in circumstances which would warrant the granting of the Petition. Indeed, the only significant difference between the two petitions is that the original Petition stressed the factual and legal issues involved in the case, while the Petition for Reconsideration focuses on the rationale for this Court allowing an appeal.[1]

This Court undoubtedly considered whether the factual and legal issues involved in this case brought the case within any of the categories of cases in which appeals are usually allowed. Indeed, without such consideration there would be no basis for this Court's previous decision not to allow an appeal.

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1 The instant Petition, citing *Kraemer v. Guarantee Trust & Safe Deposit Co.*, set out the criteria for allowing an appeal. The Petition then attempts to bring this case within the first category of cases in which appeals will be allowed, those in which the issues involved have a bearing on public interests or rights.

In any event, the Petition for Reconsideration fails to demonstrate that this case involves issues bearing on public interests or rights. The Petition melodramatically proclaims that "our judicial system . . . is undergoing the most cynical scrutiny by the citizenry of this country and is under heavy attack from all sides." Putting aside the validity of this assertion, it has no relevance to the question at hand, *viz.* whether or not this Court should reconsider its denial of the earlier petition.

What is relevant is that petitioner, notwithstanding his assertions to the contrary, did have his day in court before Judge DiBona, who, after a full hearing, decided the case adversely to petitioner. The Pennsylvania Superior Court affirmed this decision *per curiam*.

Both the original and instant petitions demonstrate that this is not an unusual case which bears heavily on questions of public importance. To the contrary, it is a very typical case — one in which a client, subsequent to the settlement of a case, becomes dissatisfied with the settlement even though he had previously authorized it. If this Court were to review this case it would be flooded with petitions for allowance of appeal and the purposes of the Appellate Court Jurisdiction Act of 1970, 17 P.S. §§211.101 *et seq.*, would be subverted.

CONCLUSION

The decision of this Honorable Court denying the original Petition for Allowance of Appeal was correct when made and remains correct to date, there having been no change in circumstances. Respondent, Philadelphia Electric Company, therefore, respectfully requests that the Petition for Reconsideration of Denial of Petition for Allowance of an Appeal be denied.

LISA J. HOLZSAGER
JOHN J. TINAGLIA
Attorneys for Respondent
Philadelphia Electric Company

Dated:

Of Counsel:

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ANSWER OF PHILADELPHIA ELECTRIC COMPANY, APPELLEE BELOW, TO PETITION FOR ALLOCATUR

COUNTER HISTORY OF CASE

On June 8, 1962 plaintiff, Robert G. Ward, through his attorney, Jack Briscoe, instituted an action in trespass against defendant, Philadelphia Electric Company, for injuries allegedly sustained in an automobile accident on or about October 30, 1961. Mr. Briscoe subsequently withdrew from the case and the firm of Richter, Lord, Toll and Cavanaugh entered their appearance on behalf of plaintiff. Plaintiff executed a Contingent Fee Agreement which gave his attorneys full and complete authority to settle and compromise his claim.

When the case was listed in the trial pool for November, 1969, intensive settlement discussions were entered into by John J. Tinaglia, defendant's attorney, and by B. Nathaniel Richter and Jack Bernstein on behalf of the plaintiff. At a settlement conference held on November 3, 1969 before Judge Gold, the judge recommended that the case be settled for $5,000. Counsel for both plaintiff and defendant agreed to recommend this figure to their respective clients, which they did, but the offer was rejected by plaintiff.

Shortly, thereafter, Ward met with Richter in Richter's office. At that meeting Mr. Ward authorized his counsel to call defendant's counsel and settle the case for $7500. This was done; the court was notified by the attorneys for plaintiff that the case was settled for the sum of $7500 and the matter was then removed from the trial list.

Releases in the sum of $7500 were prepared by counsel for defendant and forwarded to plaintiff's attorney. Mr. Ward received the releases on or about November 21, 1969 which he never signed or returned. Over the next two and a half year period counsel for defendant was repeatedly advised by plaintiff's attorney that they had the full authority to settle the case and that the matter would be resolved by them with the plaintiff.

In September, 1972 plaintiff secured new counsel who filed a Petition for Major Listing. Defendant then filed a Petition for Leave to Pay the Agreed Settlement Amount Into Court. After a full hearing before Judge DiBona, who found that plaintiff had authorized his attorneys to settle the case for $7500, an Order was entered on January 17, 1973 granting the Petition and the case was marked "Settled, Discontinued and Ended" by the Prothonotary.

On February 20, 1973 plaintiff filed an Appeal to the Superior Court of Pennsylvania. Briefs were filed by both appellant and appellee. The matter was heard on oral argument on December 4, 1973. Petitioner's Appeal was denied and the Superior Court entered its Order per curiam on February 7, 1974 affirming the Order of the lower court.

QUESTION PRESENTED

Should a Petition for Allowance of Appeal be granted to review a decision of the Superior Court affirming an order of Court of Common Pleas granting a Petition for Leave to Pay Agreed Settlement Into Court where said decision (1) is not of extraordinary importance; (2) will not be of great precedential value in frequently occurring litigation; and (3) is in accordance with the previous decisions of the Pennsylvania Supreme, Superior and Common Pleas Courts in like cases?

I. The Standards For Determining Whether To Grant A Petition For Allowance Of Appeal.

The instant Petition for Allowance of Appeal is brought pursuant to Article II, Section 204(a) of the Appellate Court Jurisdicition Act of 1970, Act of July 31, 1970, P.L. 673, No. 223, (17 P.S. §211.204(a)), and Rule 62 of the Rules of this Honorable Court. Neither of these provisions set out the standards to be employed in determining whether to grant or deny a Petition. Nor is there any reported case which describes the applicable standards which this Honorable Court will use in reviewing a Petition filed pursuant to Section 204(a). Guidance can be obtained, however, from a series of decisions discussing the standards to be used in determining whether to grant Petitions brought pursuant to Section 7(e) of the Act of June 24, 1895, P.L. 212 (17 P.S. §190), which provided, *inter alia*, for review of otherwise unreviewable Superior Court decisions by special allowance

of either the Superior Court or by any one Justice of the Supreme Court.[1]

There can be no doubt that one of the fundamental goals of the Appellate Court Jurisdiction Act of 1970 was that of streamlining the appellate process and of relieving the overburdened docket of this Honorable Court. It follows that the allowance of appeals pursuant to Section 204(a) must be granted only in extraordinary cases, lest these purposes of the Appellate Court Jurisdiction Act of 1970 be subverted.

The cases referred to above, setting the standards under former Section 7(e) recognized that under that provision allowance should be granted only in extraordinary circumstances. These cases, fortunately, explain what constitutes extraordinary circumstances:

> "The authority of the Justices of the Supreme Court to allow special appeals is not limited, but it is apparent from the general scheme of the act that it is intended to be exceptional and based on considerations other than the mere desire or interest of the particular parties. The most obvious of the considerations are the bearing of the question on public interests or rights, the importance of the decision as a precedent in frequently occurring litigation, diversity of opinions in other courts and consequent desirability of a final determination, and generally the preservation of uniformity in the application of legal principles. Unless these or similar considerations suggest a review by this court, the final

1 This statute was expressly and absolutely repealed by Section 509(a)(1) of the Appellate Court Jurisdiction Act of 1970, 17 P.S. §211.509(a)(1).

and conclusive character of the judgments of the Superior Court ought not to be questioned or in any way trenched upon." *Kraemer v. Guarantee Trust*, 173 Pa. 416 (1896).

Accord, Stais v. Sears Roebuck & Co., 375 Pa. 289 (1954); *Phipps v. Phipps*, 368 Pa. 291 (1951); *Taylor v. Philadelphia Rapid Transit Co.*, 245 Pa. 189 (1914).

The instant Petition does not meet these standards, but rather recites summarily factual and legal arguments previously made before both the Court of Common Pleas and the Superior Court. This approach discloses a fundamental misapprehension by petitioner of the purpose of Section 204(a), and the role of this Honorable Court in reviewing Petitions brought pursuant to that provision. Petitioner would have this Court review the entire record to determine whether or not error was committed by the Superior Court and if error was committed to allow an appeal. Such a procedure would be tantamount to a review of the merits of the case, rendering the Petition requirement under Section 204(a) meaningless and burdening this Honorable Court with work that the Appellate Court Jurisdiction Act of 1970 sought to avoid. Only by applying the standards of *Kraemer v. Guarantee Trust, supra*, and its progeny, does the petition procedure of Section 204(a) make any sense.

Question Presented

II. The Instant Petition Must Be Denied Under The Applicable Standards.

A. *The Question Has Insufficient Bearing on the Public Interest to Merit Review by This Honorable Court.*

The instant case has no bearing on public interests and rights. Essentially the case raises questions which are of particular concern only to the parties immediately interested. The case does not involve issues of peculiar gravity or of general importance to merit the allowance of an appeal to question the judgment of the Superior Court.

Granting of a Petition for Allowance of Appeal would be inappropriate where, as here, the individual interest has been voluminously spread upon the record by litigants, adequately considered at all stages of the proceedings, and where, as here, there are no extraordinary circumstances.

This litigation involves questions of express and apparent authority of an attorney to enter settlement negotiations on behalf of his client and whether the client, when informed that his counsel has settled his claim, can effectively repudiate that settlement three years later. Petitioner presented his position, at the hearing before Judge DiBona and in the Brief of Appellant filed and argued before the Superior Court. Judge DiBona, as the trier of fact, made findings regarding factual issues. Both Judge DiBona and the Superior Court resolved the legal questions in favor of defendant. Petitioner has failed to present any pressing public need for further review of the issues involved by this Honorable Court.

B. *The Importance of the Superior Court Decision as Precedent in Frequently Occurring Litigation.*

First, this type of litigation is not frequently occurring. Second, even if it were, the Superior Court decision would be of no precedential value. Its Order affirmed per curiam the Order of the lower court which does not contain any new or radical holding of law which would be of any precedential value. Rather, the opinion deals with the application of already established and traditional principles of law to a given set of facts. An opinion of this type is of precedential value only to a future litigant in a similar factual situation, and it is highly doubtful that there will be many, if any, such litigants in the near future.

C. *Diversity of Opinions in Other Courts and the Preservation of Uniformity in the Application of Legal Principles.*

As mentioned above, the Superior Court did not consider "new law" in its decision to enter an Order affirming per curiam the Order of the lower court, but rather applied long-established principles to the facts of the case.

In short, the Superior Court's decision here is congruent with the existing case law, including this Court's decision in *Yarnall v. Yorkshire Worsted Mills,* 370 Pa. 93 (1952) and decisions of the Superior Court in *Sustrik v. Jones & Laughlin Steel Corporation,* 189 Pa. Super. 47 (1959); *Baumgartner v. Whinney,* 156 Pa. Super. 167 (1944). There is, therefore, no need for review of the instant case by this Honorable Court in order to insure uniformity.

CONCLUSION

The Superior Court, after reviewing the entire record, decided to affirm per curiam the Order of the lower court finding that petitioner authorized his attorneys to settle his case, accepted defendant's offer of $7500 and that, therefore, Philadelphia Electric Company should be granted leave to pay the settlement fund into court so that the case would be marked "Settled, Discontinued and Ended" by the Prothonotary. There is no reason for this Honorable Court to undertake the task of reviewing the record again. The standards which were developed pursuant to former Section 7(e) (17 P.S. §190), are applicable to this Petition and command that the Petition be denied.

LISA J. HOLZSAGER
JOHN J. TINAGLIA
Attorneys for Philadelphia Electric Company

OF COUNSEL:

BALLARD, SPAHR, ANDREWS & INGERSOLL
1035 Land Title Building
Philadelphia, Penna. 19110

LO 7-5615

March 11, 1974

to this case is set forth in Mr. Richter's letter to R. Stuart Jenkins dated October 5th. He said, "We have a firm offer of $7,500.00. I strongly recommend it to the client, but apparently he wanted to go on."

If the Court please, I honestly urge that Mr. Ward be given his day in court for the trial of this case.

Thank you.

MISS HOLZSAGER: Your Honor, we have several comments in rebuttal. First of all, the Sustrick case indeed is different from the case at hand on its facts, not on the law. The difference is that in a seven-month period where the failure to repudiate the specific authority of his agent, there was a two-and-a-half-to-three-year period in which he did that. The case, in the case at bar, was removed from the trial list and did not have to go to trial. That's the other difference. But beyond that, I think you will agree when you read the brief that we have submitted that the Sustrick case is a case that can be cited in support of our position that there was apparent authority which was not repudiated or disavowed within a reasonable time.

ORDER

AND NOW, to wit, this 17 day of January, 1973, upon Petition of defendant and after hearing thereon, the Court finds that the plaintiff, Robert G. Ward, accepted the offer of $7,500.00 in settlement of all claims in this matter, and it is hereby Ordered and Decreed that defendant Philadelphia Electric Company is granted leave to pay into Court the said settlement funds of $7,500.00; that the Prothonotary of the Court of Common Pleas upon the receipt of the said $7,500.00 is not to pay any sums to the plaintiff from the said sum until the attorney fees of B. Nathaniel Richter, Esquire, and R. Stuart Jenkins, Esquire, have been paid in full from the said sum; that upon receipt of the said sum of $7,500.00, the Prothonotary is directed to mark the record of this case Settled, Discontinued and Ended; and after payment of said sum of $7,500.00 to the Prothonotary of the Court of Common Pleas of Philadelphia County, the defendant Philadelphia Electric Company is discharged of all liability to the plaintiff, Robert G. Ward, in this matter.

s/G. Fred DiBona
G. Fred DiBona, *J.*

OPINION

DiBona, *J.*

This case presents the rather unique question of the effect of a settlement entered into by Plaintiff's counsel where Plaintiff denies giving to his attorney authority to settle the case. The matter was brought before the court on Defendant's Petition and Rule for leave to pay the Seventy Five Hundred Dollars ($7500.00), which represented the amount of the settlement, into court and to have the matter marked settled. After a hearing during which the factual circumstances were fully developed we granted the Defendants petition, ordered that the $7500 be placed with the court and further ordered the case marked settled.

The relevant facts out of which this matter arises can be briefly recapitulated. On June 8, 1962, Plaintiff, through his then attorney, Jack Briscoe, Esquire, instituted an action in trespass against the Defendant, Philadelphia Electric Co., for injuries sustained in an automobile accident on or about October 30, 1961. On January 10, 1964, Mr. Briscoe withdrew from the case and the firm of Richter, Lord, Toll & Cavanaugh entered their appearance on behalf of the Plaintiff. Jack Bernstein, Esquire, of that firm was assigned to handle the suit. On January 8, 1964 Plaintiff executed a standard form contingent fee agreement whereby the firm was authorized to ". . . bring suit or to settle and compromise the said claim." The case was placed on the trial list and assigned to a settlement conference before then Judge Joseph Gold who recommended the case be compromised for Five Thousand Dollars ($5000.00). Threafter, John Tinaglia,

Esquire, counsel for Defendant, secured from his principal authorization to pay the recommended figure of $5000.00 and communicated this in a firm verbal offer to Mr. Bernstein who in turn informed his client of the offer and recommended its acceptance. Mr. Ward, however, refused.

From this point on the actual sequence of events is in dispute. Mr. Bernstein testified that a short time thereafter Mr. Ward came to the office of Richer, Lord, Toll & Cavanaugh and informed him that he preferred to have Mr. Richter or some other senior counsel of the firm try the case. Whereupon Mr. Ward was then taken by Mr. Bernstein to the office of B. Nathaniel Richter, Esquire. The latter in his testimony corroborated Mr. Bernstein's version up to this point and stated further that he indicated to Mr. Ward he might be able to ge $7500.00 in response to which Mr. Ward said, "Get the releases." Mr. Richter then called Mr. Tinaglia who at Mr. Richter's request secured authorization to pay $7500 and communicated this to Mr. Richter by telephone. According to Mr. Richter he turned to Mr. Ward, informed him of the amount which Mr. Tinaglia was authorized to pay and Mr. Ward replied, "Get the releases."

Mr. Ward, in his testimony, disputes Mr. Richter's version contending that no such conversation ever took place in his presence. On the contrary he alleged he received notice of the $7500 offer by telephone from Mr. Richter and indicated then he would think it over. He then called Mr. Bernstein, told him the amount was not enough but if Mr. Bernstein would put it in "writing" he would think it over and if he later found it acceptable he would "sign the papers." According to Mr. Ward, Mr. Bernstein forwarded the releases to him and after "a month or two or

a week or two" he called Mr. Bernstein and informed him he declined the offer.

We accepted Mr. Richter's version of the facts and concluded that his acceptance of the $7500 offer was accomplished with the authority of his client, Mr. Ward. We base this on the following considerations: Mr. Tinaglia, in his testimony, stated that at the tme of his offer to pay $7500, Mr. Richter told him Mr. Ward was then present in his office with him. We thus find that with respect to an important point in the case about which there is diametrically divergent testimony Mr. Richter is supported by the testimony of Mr. Tinaglia. Moreover, this version of the facts is lent additional corroboration by Mr. Bernstein's statement that on the day in question he recalls Mr. Ward coming to his office and taking Mr. Ward to see Mr. Richter personally, another point on which Mr. Richter and Mr. Ward gave conflicting testimony.

Mr. Ward contends that Mr. Richter's version of the negotiation is refuted by the latter's letter to R. Stuart Jenkins, Esquire, in which Mr. Richter refers to the $7500 as a "firm offer." The difficulty with this contention is that it ignores the context of the letter in which the reference appears. Mr. Ward following his refusal to sign the releases discharged the firm of Richter, Lord, Toll & Cavanaugh and retained as successor counsel Mr. R. Stuart Jenkins who then became involved in the negotiation with Mr. Richter concerning the release of the file. It was after an exchange of correspondence between Mr. Jenkins and Mr. Richter and almost three years after the refusal of Mr. Ward to execute the releases that the letter in question was sent. It was obvious to everyone involved at this point in time that the

case had not been concluded and therefore reference by Mr. Richter to a settlement as opposed to "firm offer" would have been pointless. Moreover, Mr. Richter's letter to Mr. Jenkins was for the purpose of stating his position with respect to the fee to which he felt he was entitled. And since this derived from the fact the offer had been made it was in these terms the reference was properly couched.

In conclusion we feel that as Mr. Richter stated Mr. Ward was present during the telephone conversation with Mr. Tinaglia and that the client upon being told of the $7500 figure said, "Get the releases." We believe further that by this statement examined in the context of the circumstances and the meaning which it reasonably conveyed authority was thereby given to effectuate a settlement.

From the foregoing reasons we granted Defendant's Petition.

DiBona

J.

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FILED
OCT 13 1974
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

No. 74-435

ROBERT G. WARD

vs.

PHILADELPHIA ELECTRIC COMPANY

APPENDIX

ROBERT G. WARD
In Propria Persona

85 Oak Road
Trappe, PA 19426

THE CHANCELLOR PRESS - *Law Printers, Publishers* - Norristown, Pa.

Supreme Court of Pennsylvania

Eastern District

SALLY MRVOS
PROTHONOTARY
LAURA E. LITCHARD
DEPUTY PROTHONOTARY

PHILADELPHIA 19107

May 29, 1974

Mr. Robert G. Ward
85 Oak Street
Trappe, Pa. 19426

In re: Robert G. Ward, Petitioner
v. Phila. Electric Co., No.
1344 Allocatur Docket

Dear Mr. Ward:

Please be advised that the Court has entered the following Order on the Petition for Allowance of Appeal from Judgment of the Superior Court, in the above captioned matter:

"May 14, 1974

Petition Denied

Per Curiam"

Very truly yours,

Sally Mrvos

Prothonotary

SMM:mb

CC: Lisa J. Holzager, Esq.

Supreme Court of Pennsylvania

Eastern District

SALLY MRVOS
PROTHONOTARY
LAURA E. LITCHARD
DEPUTY PROTHONOTARY

PHILADELPHIA 19107

July 30, 1974

Thomas H. Goldsmith, Esq.
711 Land Title Building
Philadelphia, Pa. 19110

Re: Robert G. Ward, Petitioner
v. Phila. Electric Co.,
No. 1344 Allocatur Docket

Dear Mr. Goldsmith:

Please be advised that the Court has entered the following Order on the Petition for Reconsideration of Petition for Allowance of Appeal in the above captioned matter:

"July 19, 1974

Petition denied

Per Curiam"

Very truly yours,

Sally Mrvos

Prothonotary

SM:ejh

cc: Lisa J. Holzager, Esq.

LIBRARY
SUPREME COURT, U. S.

FILED
NOV 13 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974.

No. 74-435

ROBERT G. WARD,
Petitioner,

v.

PHILADELPHIA ELECTRIC COMPANY,
Respondent.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

JOHN J. TIRADELLA,
LISA J. HOLLAGHER,
Attorneys for Respondent.

Of Counsel:
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& INGERSOLL,
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Philadelphia, Pennsylvania 19110

International Printing Co., 711 Sansom St., Phila., Pa. 19106 — Tel. (215) 627-2711

JURISDICTION.

Petitioner states in his Petition that jurisdiction is conferred upon this Court by "28 U. S. C. A. 2873." Title 28 does not contain a section designated as 2873. Petitioner, therefore, has failed to state any basis for this Court to assume jurisdiction of this matter. If this Court has jurisdiction over this case it would be by virtue of 28 U. S. C. § 1257. Under the facts of this case, however, there is no jurisdiction for this Court under § 1257.

COUNTER STATEMENT OF THE CASE.

Petitioner, Robert Ward, instituted a trespass action in the Court of Common Pleas of Philadelphia County against respondent, Philadelphia Electric Company on June 8, 1962 for injuries allegedly sustained in a motor vehicle accident. In November, 1969, (shortly before the case was scheduled to be tried) a settlement conference took place before the Honorable Joseph E. Gold, of the Court of Common Pleas. Judge Gold recommended that the case be settled for $5,000. A few days thereafter, counsel for the parties involved, with the authorization of their respective clients, agreed to settle the case for $7,500. The Common Pleas Court was then notified of the settlement by the attorney for Ward and the case was removed from the trial list.

In September of 1972, more than two years after receipt of the releases from his attorney, Ward refused to sign the releases and retained new counsel who attempted to place the case on the trial list. Philadelphia Electric Company filed an Answer, claiming that the case was settled, and also filed a Petition for Leave to Pay the Agreed Settlement Amount into Court. A full hearing on this Petition was held before the Honorable G. Fred DiBona of the Court of Common Pleas. Judge DiBona held that the case was indeed settled and directed Philadelphia Electric Company to pay the settlement fund of $7,500 into Court. No demand for a jury trial on the issue of settlement, *vel non*, was made at any time either by Ward or his then counsel, R. Stuart Jenkins, Esquire.

On appeal by Ward, the Superior Court of Pennsylvania affirmed Judge DiBona's decision *per curiam*. The Supreme Court of Pennsylvania, though requested twice by Ward in a Petition for Allowance of Appeal and a Petition for Reconsideration, refused to review the case. The matter is now before this Court on Petition for Writ of Certiorari.

ARGUMENT.

Rule 19 of the Rules of this Court provides, in part, as follows:

> 1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered.
>
> (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

In the instant case, the Pennsylvania State Courts did not decide *any federal question* and the Petition for a Writ of Certiorari fails to demonstrate the existence of a federal question under the facts or the law. Therefore, the Petition for Writ of Certiorari should be denied.[1]

The central theme of the Petition is that petitioner was denied a trial by jury on the settlement issue in violation of his Seventh Amendment rights. Petitioner, however, never demanded a jury on the issue of settlement in the Court of Common Pleas prior to, or at the time of the hearing before Judge DiBona, and thus waived any right to a jury trial that he might have had. It is a well settled principle of law and procedure in Pennsylvania that "matters not raised in, or considered by, the court below cannot

---

1. Indeed, it is unclear whether this Court even has jurisdiction over this petition. However, since the exercise of sound discretion dictates that the Petition be denied, the jurisdictional question will not be briefed.

be invoked on appeal even though they involve constitutional questions." *Altman v. Ryan*, 435 Pa. 401, 407 (1969). The matter at issue, then, is not whether petitioner was entitled to a jury trial, but whether a state may require that jury trials be seasonably demanded. Clearly, this latter question is not one which ought to be reviewed by this Court.[2]

Petitioner's due process claim is also spurious and the cases cited in his Brief for the proposition that he has been denied his day in court are not applicable to the instant case. Petitioner has had the consideration of a court with respect to the legal and factual issues involved which simply pertain to the question of whether he authorized his attorney to settle his case.

To a large extent petitioner's due process claim overlaps with petitioner's contention that he was entitled to a jury trial. To the extent that it does not overlap, the claim appears to be that Judge DiBona's holding is not supported by the weight of the evidence. It has long been held that this is not a proper subject for review by this Court.

If this case raises due process issues then every case which involves a factual determination does so as well. This Court should not undertake the task of determining whether trial judges correctly weighed evidence, especially where no federal question is involved and where the case originated in a state court. The admonition of Justice Holmes that "[w]e do not grant certiorari to review evidence and discuss specific facts" should be heeded. *United States v. Johnston*, 268 U. S. 220, 227 (1925).

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2. Petitioner would not have a Seventh Amendment claim even if he had timely demanded a jury. The Seventh Amendment only guarantees a trial by jury in suits at common law. This does not mean that a party is entitled to a jury on every incidental motion or petition. Moreover, it does not offend the Seventh Amendment for a judge to take a case away from a jury in appropriate instances. *Galloway v. U. S.*, 319 U. S. 372, 389 (1943).

CONCLUSION.

The Superior Court of Pennsylvania, after reviewing the entire record of the Court of Common Pleas and after oral argument by the parties, affirmed *per curiam* the Order of the lower court finding that petitioner authorized his attorney to settle his case, that petitioner had accepted respondent's offer of $7,500 and that, therefore, respondent should be granted leave to pay the settlement fund into the Court. Petitioner then filed his appeal to the Supreme Court of Pennsylvania which refused to review the decision of the Superior Court on two occasions and denied petitioner's request for reconsideration of his appeal. Petitioner now brings this case before this Honorable Court claiming that a Writ of Certiorari should be granted to consider the federal questions involved in the case. Petitioner has failed to demonstrate that a federal question exists and, therefore, respondent, Philadelphia Electric Company, respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

JOHN J. TINAGLIA,
LISA J. HOLZSAGER,
Attorneys for Respondent.

Dated: November 11, 1974.

Of Counsel:
BALLARD, SPAHR, ANDREWS & INGERSOLL,
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Supreme Court, U. S.
FILED
JAN 31 1975
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

No. 74-435

ROBERT G. WARD

vs.

PHILADELPHIA ELECTRIC COMPANY

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI

ROBERT G. WARD
In Propria Persona

85 Oak Road
Trappe, PA 19426

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ADDITIONAL REASONS FOR THE ALLOWANCE OF A WRIT

Under the provisions of this Court Rule 58 (2), the petitioner requests this Court to rehear its Order of December 9, 1974, denying petitioner's Petition for a Writ of Certiorari.

The petition, in addition to the previously alleged reasons in his original Petition for a Writ of Certiorari, has been denied effective assistance of counsel and deprived of property rights as a result thereof.

The present factual dispute should have been settled by a jury trial. The petitioner is not asking this Court to settle or decide on factual dispute as set forth in respondent's previous Answer. Petition is merely alleging that what factual dispute there was should have been resolved by a jury trial, which has been consistently requested by the petitioner.

Respondent contends in his Answer that there were no federal questions raised when, in fact, there were numerous federal questions raised in petitioner's initial petition and now in the present Petition for rehearing. There has been a violation of the Seventh Amendment (right to a jury trial to resolve the civil liabilities), and a violation of value process and equal protection of the laws.

The jury trial issue was raised by the petitioner before the hearing judge, the Senior Court of Pennsylvania and Supreme Court of Pennsylvania.

Petitioner's counsel has prejudiced his property rights without authorization from the Petition and the hearing

judge has ratified that action. An attorney has no power to release a client's cause of action or to surrender substantial rights in whole or in part or compromise or settle his client's litigation without special authority to do so. In this case, the petitioner did not give such authority and, therefore, the petitioner's attorney's agreement to accept less than the amount that the Petitioner was willing to accept would not affectuate a settlement prior to trial.

89 *C.J.S. "Trials"* §577 (1955). Cited in support of the emphasized portion of this statement are the following cases: *Empire Steel Bldg. Co. v. Harvey Machine Co.*, 122 Cal. App. 2d 411, 265 P.2d 32; *Rosenfield v. Vosper*, 45 Cal. App. 2d 365, 114 P.2d 29; *A. & C. Adjusters, Inc. v. Bragg*, 205 A.2d 602 (D.C. App.); *Western Contracting Corp. v. State Highway Dept.*, 123 Ga. App. 331, 181 S.E. 2d 690; *Smith v. Ford Motor Co.*, 38 App. Div. 852, 330 N.Y.S. 2d 182.

Curtis v. Lothar, ... U.S. ....., 42 U.S.L.W. 4259 (U.S. Feb. 20, 1974), held that the Seventh Amendment entitles either party to demand a jury trial in an action for damages in the federal courts under the Civil Rights Act of 1968, which authorizes private plaintiffs to bring civil actions to redress violations of the Act's fair housing provisions. The Court held that a damage action under the Act sounded basically in tort, and was analogous to a number of tort actions recognized at common law. Moreover, the relief sought by the plaintiffs — actual and punitive damages — was a traditional form of relief offered in the courts of law. The Court noted the "force of the petitioner's policy arguments" concerning the delay inherent in jury trials for these causes, but concluded that "these considerations are

insufficient to overcome the clear command of the Seventh Amendment."

In *Pennell v. Southall Realty*, ... U.S. ...., 42 U.S.L.W. 4959 (U.S. April 24, 1974), the Court again emphasized the fundamental importance of Seventh Amendment rights when it held that the Amendment entitles either party to demand a jury trial in an action to recover real property in the District of Columbia. The Court relied upon *Curtis v. Lothar, supra,* in concluding that the Seventh Amendment "requires trial by jury in actions unheard of at common law, provided that the action involves rights and remedies of the sort traditionally enforced in an action at law, rather than in an action at equity or admiralty."

WHEREFORE, ROBERT G. WARD, respectfully requests for all of the foregoing reasons, this Honorable Court grant the Petition for Rehearing of Order Denying Petition for a Writ of Certiorari.

Respectfully submitted,

ROBERT G. WARD
In Propria Persona